

House Study Bill 661 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
VETERANS AFFAIRS BILL BY
CHAIRPERSON SALMON)

A BILL FOR

1 An Act relating to employment protections for state employees
2 who are veterans.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 35C.6, Code 2022, is amended by striking
2 the section and inserting in lieu thereof the following:

3 **35C.6 Removal — certiorari — judicial review.**

4 1. For the purposes of this section:

5 *a. "Aggravated misconduct"* means repeated misconduct a
6 person knows will likely cause harm but the person, after being
7 given a warning and reasonable opportunity to correct the
8 person's actions, willfully continues the conduct, or an act
9 with readily apparent, serious, and harmful consequences that
10 would deter a reasonable person in similar circumstances from
11 committing that act.

12 *b. "Removal authority"* means an official of an entity that
13 determines whether or not to remove a veteran at a pre-removal
14 hearing.

15 2. A veteran holding a public position by appointment or
16 employment shall not be removed from the position except upon a
17 finding of incompetency or aggravated misconduct.

18 3. *a.* A removal of a veteran is not valid unless, prior to
19 the removal, the veteran's employer completes an investigation
20 into the alleged incompetency or aggravated misconduct, gives
21 written notice to the veteran of each charge of incompetency or
22 aggravated misconduct and, at a pre-removal hearing held within
23 a reasonable amount of time, a removal authority finds the
24 veteran is incompetent or has committed aggravated misconduct
25 and should be removed.

26 *b.* A notice given to a veteran pursuant to paragraph "a"
27 shall include the specific facts alleged to support each count
28 of incompetence or aggravated misconduct, the date, time, and
29 location of the veteran's pre-removal hearing, the name and
30 contact information for the removal authority, and a statement
31 that the veteran has the right to a review of a removal
32 authority's decision by a writ of certiorari or judicial review
33 in accordance with chapter 17A.

34 *c.* If a removal authority has determined a veteran should
35 be removed due to incompetence or aggravated misconduct,

1 the removal authority shall provide the veteran written
2 notification of the decision, the findings and rationale in
3 support of the decision, and the veteran's right to a review
4 of the decision by a writ of certiorari or judicial review in
5 accordance with chapter 17A, as applicable.

6 *d.* A writ of certiorari or petition filed pursuant to this
7 subsection shall be filed within three hundred days of the
8 veteran's receipt of notice of the veteran's removal from the
9 removal authority.

10 4. *a.* Unless extended by consent of the parties to a
11 pre-removal hearing or for good cause, within thirty days of
12 receiving notice of a removed veteran's writ of certiorari or
13 petition for judicial review, a removal authority shall file
14 all of the following materials with the clerk of court:

15 (1) A certified transcript of the pre-removal hearing and
16 recorded investigatory interviews.

17 (2) Any transcripts, reports, and other materials created
18 as part of an investigation into alleged incompetency or
19 aggravated misconduct.

20 (3) Any audio or video recordings created in relation to the
21 veteran's removal.

22 (4) The administrative record or return to the writ related
23 to the removal.

24 *b.* Upon a showing of good cause, a court shall seal
25 materials submitted pursuant to paragraph "a" that the court
26 determines to be confidential in nature, including but not
27 limited to documents relating to a person's medical history
28 or health, financial information, and personal identifying
29 information.

30 5. Upon a court or administrative law judge finding that
31 a veteran has been removed in violation of this section, the
32 court or administrative law judge shall award the removed
33 veteran reimbursement for lost wages and benefits and order
34 the reinstatement of the veteran, if requested, and may award
35 equitable relief, injunctive relief, and reasonable attorney

1 fees.

2 Sec. 2. Section 35C.7, Code 2022, is amended to read as
3 follows:

4 **35C.7 Burden of proof.**

5 The burden of proving incompetency or aggravated misconduct
6 as defined in section 35C.6 shall rest upon the party alleging
7 the same.

8 EXPLANATION

9 The inclusion of this explanation does not constitute agreement with
10 the explanation's substance by the members of the general assembly.

11 This bill relates to employment protections for state
12 employees who are veterans.

13 The bill defines "aggravated misconduct" as repeated
14 misconduct a person knows will likely cause harm but the
15 person, after being given a warning and reasonable opportunity
16 to correct the person's actions, willfully continues the
17 conduct, or an act with readily apparent, serious, and harmful
18 consequences that would deter a reasonable person in similar
19 circumstances from committing that act.

20 The bill defines "removal authority" as an official of
21 an entity that determines whether or not to remove a veteran
22 at a pre-removal hearing. The bill prohibits a veteran from
23 being removed from a public position to which the veteran was
24 appointed or employed except upon a finding of incompetency or
25 aggravated misconduct.

26 The bill provides that a removal of a veteran is not valid
27 unless, prior to the removal, the veteran's employer completes
28 an investigation into the alleged incompetency or aggravated
29 misconduct, gives written notice to the veteran of each charge
30 of incompetency or aggravated misconduct and, at a pre-removal
31 hearing held within a reasonable amount of time, a removal
32 authority finds the veteran is incompetent or has committed
33 aggravated misconduct and should be removed.

34 The bill requires employer notice to a veteran to include the
35 specific facts alleged to support each count of incompetence

1 or aggravated misconduct, the date, time, and location of the
2 veteran's pre-removal hearing, the name and contact information
3 for the removal authority, and a statement that the veteran has
4 the right to a review of a removal authority's decision by a
5 writ of certiorari or judicial review. A writ of certiorari
6 or petition shall be filed within 300 days of the veteran's
7 receipt of notice of the veteran's removal from the removal
8 authority.

9 The bill requires a removal authority that determines
10 a veteran should be removed due to incompetence or having
11 committed aggravated misconduct, to provide the veteran written
12 notification of the decision, the findings in support of the
13 decision, and the veteran's right to a review of the decision
14 by a writ of certiorari or judicial review.

15 The bill provides that, unless extended by consent
16 of parties to a pre-removal hearing or for good cause,
17 within 30 days of receiving notice of a removed veteran's
18 writ of certiorari or petition for judicial review, a
19 removal authority shall file a certified transcript of the
20 pre-removal hearing and recorded investigatory interviews;
21 any transcripts, reports, and other materials created as part
22 of an investigation into alleged incompetency or aggravated
23 misconduct; any audio or video recordings created in relation
24 to the veteran's removal; and the administrative record or
25 return to the writ related to the removal with the clerk of
26 court. The bill also requires that, upon a showing of good
27 cause, a court shall seal submitted materials that the court
28 determines to be confidential in nature, including but not
29 limited to documents relating to a person's medical history
30 or health, financial information, and personal identifying
31 information.

32 The bill requires a court or administrative law judge that
33 finds a veteran has been improperly removed to award the
34 removed veteran reimbursement for lost wages and benefits and
35 order the reinstatement of the veteran, if requested, and may

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1 award equitable relief, injunctive relief, and reasonable
2 attorney fees.

3 The bill makes a conforming change to Code section 35C.7
4 (burden of proof).